

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gabriella Carpenter	Team: Squad #5	CCRB Case #: 201710214	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/04/2017 , Wednesday, 04/05/2017 6:50 AM	Location of Incident: § 87(2)(b)	Precinct: 67	18 Mo. SOL 10/5/2018	EO SOL 10/5/2018	
Date/Time CV Reported Mon, 12/04/2017 2:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/11/2017 10:17 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			Unknown
2. DT2 Thomas Varghese	07016	926373	067 DET
3. DT1 Michael Habert	06725	902651	DB BSHM

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: An officer threatened to damage § 87(2)(b) s property.	§ 87(2)(b)
B.DT2 Thomas Varghese	Abuse: Detective Thomas Varghese entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.DT1 Michael Habert	Abuse: Detective Michael Habert entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)

## Case Summary

§ 87(2)(b) filed a complaint with the Internal Affairs Bureau over the phone on December 4, 2017, generating log number 17-48230. The case was received by the CCRB on December 11, 2017.

On April 5, 2017, at approximately 6:50 a.m., Detective Thomas Varghese of the 67<sup>th</sup> Precinct Detective Squad, and Detectives Michael Habert and Patrick Henn of Detective Borough Brooklyn South Homicide went to § 87(2)(b)'s and § 87(2)(b)'s apartment, located at § 87(2)(b) in Brooklyn. § 87(2)(b) was returning home when the officers were outside the apartment, and according to § 87(2)(b) an unidentified officer told him that they were going to “kick the door off” if he had not arrived (**Allegation A: Abuse of Authority**, § 87(2)(g) § 87(2)(b) let the officers into his apartment (**Allegations B and C: Abuse of Authority**, § 87(2)(g) § 87(2)(b) where they arrested § 87(2)(b)'s nephew, § 87(2)(b) for § 87(2)(b).

There is no video evidence in this case.

## Findings and Recommendations

**Allegation A: Abuse of Authority: An officer threatened to damage § 87(2)(b)'s property.**

**Allegation B: Abuse of Authority: Detective Thomas Varghese entered § 87(2)(b) in Brooklyn.**

**Allegation C: Abuse of Authority: Detective Michael Habert entered § 87(2)(b) in Brooklyn.**

It is undisputed that Det. Varghese, Det. Habert, and Det. Henn entered § 87(2)(b) and arrested § 87(2)(b). § 87(2)(b) testified that he was returning home from work when he saw two officers outside his apartment door (BR 01 and BR 02). One of the officers said that it was good that § 87(2)(b) arrived because he was just about to “kick the door off.” The officers showed § 87(2)(b) a small black-§ 87(2)(b) photo on a piece of paper that said § 87(2)(b) § 87(2)(b) is § 87(2)(b)'s nephew. § 87(2)(b) let the officers into the apartment. § 87(2)(b) (BR 03 and BR 04) and § 87(2)(b) (BR 05 and BR 06) testified that § 87(2)(b) told them after the officers left that one of the officers had threatened to kick the door off, but they had not been able to hear the officers speaking outside the apartment. § 87(2)(b) and § 87(2)(b)'s sister who was also present inside the apartment, testified that she did not hear an officer threaten to kick the door down, nor did anyone tell her after the incident that an officer had done so (BR 07).

Det. Varghese testified that he, Det. Henn, and Det. Habert had an arrest warrant for § 87(2)(b) when they went to § 87(2)(b)'s apartment, but he could not recall what it was for or what address was on it, but it would not have allowed the officers to enter the apartment without consent (BR 08). While speaking to § 87(2)(b) in the hallway, Det. Varghese showed him the arrest warrant and a photo of § 87(2)(b) and § 87(2)(b) said that § 87(2)(b) was temporarily staying in the apartment and had been there the night before when § 87(2)(b) left for work. Det. Habert asked if the officers could go inside the apartment to execute the warrant, and § 87(2)(b) said yes and opened the door for them.

§ 87(2)(g)  
[REDACTED] Det. Habert testified that the arrest warrant listed a different address than the incident location, but he thought that the officers could have entered the apartment even if § 87(2)(b) had not consented to their entry because they had an arrest warrant and § 87(2)(b) confirmed that § 87(2)(b) was inside (BR 11).

Det. Henn retired on May 1, 2017.

§ 87(2)(b)'s DAS snapshot shows that only one warrant was issued for him, an arrest warrant issued on § 87(2)(b) (BR 12). The warrant was closed on February 3, 2017, two months before this incident (BR 13).

Absent a valid warrant, hot pursuit, or emergency or exigent circumstances, consent is required for officers to enter a private residence. "Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt or subtle." *People v. Gonzalez*, 39 N.Y.2d 122, 128 (1976) (BR 10).

§ 87(2)(g)  
[REDACTED]  
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[REDACTED]  
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§ 87(2)(g)  
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§ 87(2)(g)  
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[REDACTED]

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint involving § 87(2)(b) or § 87(2)(b) [REDACTED]
- Det. Habert has been a member of the service for 25 years and has 19 other CCRB allegations pled against him in 10 cases, including the following: two allegations of physical force were substantiated against him in CCRB 9602771, one refusal to obtain

medical treatment allegation was substantiated against him in CCRB 201104981, and one entry/search allegation was substantiated against him in CCRB 201608599.

- Det. Varghese has been a member of the service for 18 years and has 16 other CCRB allegations pled against him in seven cases, including the following: a retaliatory arrest allegation and a search of a person allegation were substantiated against him in CCRB 200509835. An entry/search allegation was also pleaded against him in CCRB 201305911 and was closed as exonerated.

### **Mediation, Civil and Criminal Histories**

- Due to § 87(2)(b) s ongoing criminal case, this case was not suitable for mediation.
- No notice of claim was filed in regard to this incident (BR 09).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date